

**STATE OF TEXAS  
DEPARTMENT OF INFORMATION RESOURCES  
VOLUME PRICING CONTRACT  
3COM**

This **VOLUME PRICING CONTRACT** for the acquisition of 3Com networking hardware and software products and related services is entered into between the State of Texas, acting by and through the Department of Information Resources with its principal place of business at 300 West 15<sup>th</sup> Street, Suite 1300, Austin, Texas 78701, and 3COM, with its principal place of business at 5400 Bayfront Plaza, Santa Clara, CA 95052.

**1. Contract Scope and Term**

This Contract sets forth the terms and conditions governing the acquisition of networking hardware and software products and related services. Terms used in this document shall have the meanings set forth below in Section 2, Definitions. This Contract is available for use by all Customers.

The term of this Contract shall be two (2) years commencing on the date of approval by the parties. Prior to expiration of the original term, the parties may renew this contract, upon approval of DIR, for up to two (2) optional one-year terms. Upon termination of this Contract, all rights and obligations set forth herein shall survive in accordance with their terms as to procurements made by Customers prior to such termination.

**2. Definitions**

Terms used in this Contract shall have the following meanings:

- A. DIR** - the Department of Information Resources.
- B. Customer** - any Texas state agency and local government as defined in Section 2054.003, Texas Government Code (including institutions of higher education as defined in Texas Education Code, Section 61.003), and those state agencies purchasing from a DIR contract through an Interagency Agreement, as authorized by Chapter 771, Texas Government Code.
- C. Manufacturer** - 3COM.
- D. Reseller** - distributor, dealer, or value-added reseller designated by the Manufacturer who participates as a primary distribution source for the Manufacturer.
- E. Product** - any Networking Hardware item manufactured or produced by the Manufacturer. Product may include any pre-loaded software necessary for operation.
- F. Services** - any value-added service that the Manufacturer and/or Reseller may perform as related to products available under this Contract. For example: warranty, support services, installation, and product training.
- G. State Contract Administrator** - the individual as appointed by DIR to administer this Contract on behalf of the State of Texas and the Customers.
- H. Manufacturer Contract Administrator** - the individual as appointed by the Manufacturer to administer this Contract on behalf of the Manufacturer and Resellers.
- I. Administrative Fee** - the fee used to defray DIR's cost of negotiating, executing and administering this contract.
- J. Purchase Order** - the Customer's fiscal form or format, which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, Electronic Purchase Order, or other authorized instrument).
- K. Information Resources Technology (Technologies)** - as defined in Texas Government

Code §2054.003.

- L. **Day** Shall mean business days, Monday through Friday, except for State and Federal holidays. If the Contract calls for performance on a day that is not a business day, then performance is intended to occur on the next business day.
- M. **State** – refers to the State of Texas.

3. **Entire Agreement and Order of Precedence**

This Contract; Appendix A, Standard Clauses for State of Texas DIR Contracts; Appendix B, Manufacturer's Historically Underutilized Businesses Subcontracting Plan; 3Com's Pricing Index Appendix C, Appendix D Service Agreement Terms and Conditions, and 3Com's response to the ITN DIR-TMP-02-036 constitute the entire agreement between the parties hereto. In the event of a conflict between the documents listed in this paragraph, the controlling document shall be this Contract, Appendix A, Appendix B, Appendix C, Appendix D and finally the ITN. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by both parties hereto, with the approval of DIR.

The terms and conditions set forth herein shall govern all transactions by Customers under this Contract. Customers shall not have the authority to modify the terms of this Contract, except as to receive better terms or pricing for a particular procurement than those set forth herein. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request. No additional term or condition of a purchase order issued by a Customer can weaken a term or condition of this Contract. In the event of a conflict between a Customer's purchase order and this Contract, the Contract term shall control.

4. **Product and Service Offerings**

Products available under this Contract are set forth as any Networking Hardware, Software, Telephony, or CommWorks item manufactured and produced by the Manufacturer. Services include any value-added service that the Manufacturer and/or its Reseller may perform as related to products available under this Contract.

A. **Products**

Manufacturer will maintain a product list including pricing, product descriptions, and product specifications for all products offered under this Contract. The product list may be updated at any time during the term of this Contract to incorporate product model changes or product upgrades, addition of new products, and removal of obsolete or discontinued products.

B. **Services**

Examples of service include, but are not limited to: warranty, support services, installation, and product training. Manufacturer will maintain a list including pricing and descriptions for all services offered under this Contract. The services list may be updated at any time during the term of this Contract to incorporate changes to the service offering.

5. **Contract Administration**

DIR and the Manufacturer will each provide a Contract administrator to support this Contract. Information regarding the Contract administrators will be posted on the Internet web site designated for this Contract.

A. **DIR Contract Administrator**

Manufacturer's performance under the terms and conditions of this Contract, and iii) periodic verification of product pricing and monthly reports submitted by Manufacturer.

**B. Manufacturer Contract Administrator**

Manufacturer shall provide a dedicated Contract administrator whose duties shall include but not be limited to: i) supporting the marketing and management of this Contract, ii) facilitating dispute resolution between a Reseller and a Customer, and iii) advising DIR of Resellers performance under the terms and conditions of this Contract. DIR reserves the right to require a change in Manufacturer's then-current contract administrator if the assigned administrator is not, in the opinion of DIR, adequately serving the needs of the State.

**6. Use of Resellers**

Manufacturer shall provide service, sales and support resources to serve Customers at multiple geographic purchasing locations throughout the State of Texas through an authorized Reseller. DIR agrees to permit Manufacturer to utilize designated Resellers so that sufficient resources are available to insure maximum service capability throughout the State. Such participation is subject to the following conditions:

**A. Designation of Resellers**

Manufacturer shall designate no less than three (3) Resellers to participate under this Contract, without the approval of DIR. At any time, DIR reserves the right to rescind any such Reseller participation or request that Manufacturer name additional Resellers should DIR determine it is in the best interest of the State.

Manufacturer shall have the right to qualify Resellers and their participation as fulfillment agents under this Contract by product line, contracting program (i.e., government/educational sales), geographic region, size/sales volume, technical training or other criteria, provided that: i) such criteria are uniformly applied to all potential Resellers based upon Manufacturer's established, neutrally applied commercial/governmental program criteria, and not to a particular procurement; and ii) all general categories of criteria are fully covered by participating Resellers to meet the needs of Customers.

All Resellers who have been approved by the Manufacturer in accordance with the foregoing paragraph shall be eligible to quote lower pricing for procurements under this Contract which meet their qualifying criteria. Manufacturer warrants and represents that it shall not, directly or indirectly, by agreement, communication or any other means restrict any Reseller's participation or ability to quote a particular order, or prohibit Reseller from participating in other procurement opportunities offered through DIR.

**B. Changes in Reseller List**

Manufacturer may add and/or delete Resellers throughout the term of the contract. However, the participating Resellers must geographically provide adequate coverage to the entire State.

**C. Conditions of Reseller Participation**

All participating Resellers must be approved Qualified Information Systems Vendors with the State of Texas. At least two (2) of the three (3) participating Resellers must be Historically Underutilized Businesses as defined by the Texas Building and Procurement Commission.

**D. Responsibility for Reseller Performance and Reporting**

Manufacturer shall be fully liable for Resellers performance and compliance with all Contract terms and conditions herein. Manufacturer shall be responsible for reporting all products and

services purchased through Resellers, in accordance with Section 12, Reporting and Administrative Fees.

**E. Available Products and Services**

Products and services ordered directly through Resellers shall be limited to products and services previously approved for inclusion under this Contract in Section 4, Product and Services Offerings, and shall be subject to all terms and conditions of this Contract as a condition of Reseller participation.

**F. Reseller Pricing to the Customer**

Manufacturer is required to offer the same Customer Discount to all participating Resellers. More advantageous pricing for large volume purchases may be offered, however the pricing for such an opportunity will be the same for all participating Resellers. The participating Resellers are not allowed to add margin to the Customer Discount given by Manufacturer.

**7. Pricing**

The price to the Customer under this Contract will be established by the Manufacturer and shall be the lowest price offered through Resellers to any governmental entity for the same product or service in the same volumes and under substantially similar terms and conditions. Any violation of this provision may result in this Contract being terminated.

**A. Customer Discount**

Based on a quantity of one (1), the Customer discount from the Resellers for all products and services will be as stated in the Pricing Index attached hereto as Appendix C. Customer may negotiate more advantageous pricing for large volume purchases with a participating Reseller. The Customer Discount set forth herein shall adhere to Section 6 Paragraph F, Reseller Pricing to the Customer.

**B. DIR Administrative fee**

The DIR administrative fee specified in Section 12, Reporting and Administrative Fees, shall be included in the Customer Discount set forth herein. The administrative fee shall not be broken out as a separate line item when pricing or invoice is provided to Customer.

**C. Shipping and Handling Fees**

The price to the Customer under this Contract shall include all shipping and handling fees. Shipments will be F.O.B. Customers destination. No additional fees shall be charged to the Customer for standard shipping and handling. If the Customer requests expedited delivery, Customer will be responsible for any charges for expedited delivery.

**D. Tax-Exempt**

Customers are exempt from all federal and state sales tax.

**E. Changes to Prices**

Manufacturer may change the price of any product or service at any time, based upon changes to the Manufacturer's Suggested Retail Price, but discount levels shall remain consistent with the discount levels specified in Paragraph A, Customer Discount, of this Section. Price decreases shall take effect automatically during this Contract term and Manufacturer shall pass all price decreases on to the Customer.

Manufacturer may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as

Manufacturer may make product model changes and add new products or product upgrades at any time and the pricing for the same shall incorporate comparable price discount levels as specified in Section 7, Paragraph A, Customer Discount.

**8. Order Processing and Payments**

All Customer purchase orders will be placed directly with the participating Resellers. Accurate purchase orders shall be effective and binding upon Reseller when placed in the mail or electronically transmitted prior to the termination of this Contract period to the extent they comply with all the terms of this agreement. The DIR contract number should be reflected on all purchase orders.

Invoices shall be submitted by Reseller directly to the Customer. All payments for products and/or services purchased under this Contract and any provision of acceptance of such products and/or services shall be made to the Reseller by the Customer.

Invoices must be timely and accurate. Each invoice must match Customer's order and include any written changes that may apply, as it relates to products, prices and quantities. Invoices must include the Customer's purchase order number or other pertinent information for verification of receipt of the order by the Customer.

Customer(s) shall comply with Chapter 2251, Texas Government Code, in making payments to Reseller. Payment under this contract shall not foreclose the right to recover wrongful payments.

**9. Software Licensing Agreement**

Customers purchasing software licenses under this Contract shall hold, use and operate such software subject to compliance with the Software Licensing Agreement that is packaged with the product. No changes to the License Agreement Terms and Conditions may be made unless previously agreed to between Manufacturer and DIR. Reseller shall make the Software Licensing Agreement terms and conditions available to all Customers at all times.

Compliance with the Software Licensing Agreement is the responsibility of the Customer. DIR shall not be responsible for any Customer's compliance with the Software Licensing Agreement. If DIR purchases software licenses for its own use under this Contract, it shall be responsible for its compliance with the Software Licensing Agreement terms and conditions.

**10. Service Agreement**

Customers purchasing services under this Contract shall execute a Service Agreement with Manufacturer as set forth in Appendix D hereto. No changes to the Service Agreement terms and conditions may be made unless previously agreed to by Manufacturer and DIR. The Service Agreement shall include Service Level Descriptions for related products.

**11. Internet Access to Contract and Pricing Information**

Access by Customers to Contract terms and pricing information shall be made available and posted on the Internet. To that end, Manufacturer will be required host the complete Contract product and service offerings, including pricing, at Manufacturer's Internet site. Internet access to this information will be provided including all subsequent changes to the product and services offerings and pricing during the term of this Contract at no cost to DIR, the State, and Customers.

**A. Accurate and Timely Contract Information**

Manufacturer warrants and represents that Contract and related information will be accurately and completely posted, maintained and displayed in an objective and timely manner which

errors or inaccuracies in such information, or from any failure to maintain or timely post Contract information in accordance with this paragraph.

**B. Price Data Retention and Compliance Checks**

Periodic Compliance Checks of the information posted for this Contract on Manufacturer's web site will be conducted by DIR. Upon request by DIR, Manufacturer shall provide verifiable documentation that pricing listed upon this site is uniform with the Customer Discount as stated in Section 7-A.

**C. Web Site Changes**

Manufacturer hereby consents to a link from the DIR web site to Manufacturer's web site in order to facilitate access to Contract information. The establishment of the link is provided solely for convenience in carrying out the business operations of the State. DIR reserves the right to terminate or remove a link at any time, in its sole discretion, without advance notice, or to deny a future request for a link. DIR will provide Manufacturer with subsequent notice of link termination or removal. Manufacturer shall provide DIR with timely written notice of any change in URL or other information needed to access the site and/or maintain the link.

**D. Use of Access Data Prohibited**

If Manufacturer stores, collects or maintains data electronically as a condition of accessing State Contract information, such data shall only be used internally by Manufacturer for the purpose of implementing or marketing the State Contract, and shall not be disseminated to third parties or used for other marketing purposes. This Contract constitutes a public document under the laws of the State and Manufacturer shall not restrict access to the Contract terms and conditions including pricing, i.e., through use of restrictive technology or passwords.

**E. Responsibility for Content**

Manufacturer is solely responsible for administration, content, intellectual property rights, and all materials at Manufacturer's web site. Manufacturer is solely responsible for its actions and those of its agents, employees, Resellers, or subcontractors, and agrees that neither Manufacturer nor any of the foregoing has any authority to act or speak on behalf of DIR or the State. DIR requires Manufacturer to list all participating Reseller's information on the web site, such as: company name, address, contact information, phone and fax number, email address, State Vendor ID number, and other applicable information as deemed necessary by DIR. DIR also reserves the right to require a change of listed content if, in the opinion of DIR, it does not adequately represent this Contract.

**F. On-line Price Configurator**

Manufacturer may be required to make available an on-line configurator at its Contract web site. Directions and assistance in using the configurator and web site in general must be available at entry. This configurator must enable Customers to: (i) view the options available for the type of product or service requested, (ii) search and find products or services offered under this Contract, (iii) calculate complete acquisition costs. Information consistent with the terms of this Contract about payment, shipping, returns, delivery terms and special pricing shall be available. Customers shall have the option of printing their "shopping cart" choices. For those users who are positioned to use it, Manufacturer shall make available an option for on-line secure ordering.

**12. Reporting and Administrative Fees**

Manufacturer shall be responsible for reporting all products and services purchased through Resellers under this Contract. The failure to file the monthly reports, subcontract reports, and pay the administrative fees on a timely basis will constitute grounds for suspension or termination of the contract for cause. If Manufacturer submit three (3) consecutive monthly reports incorrectly, DIR reserves the right to suspend or terminate this contract for cause. Manufacturer's liability for any breach of this section is limited to the amount of administrative fees owed to DIR by Manufacturer.

DIR shall have the right to verify required reports and to take any actions necessary to enforce its rights under this section, including but not limited to, compliance checks of Manufacturer's applicable Contract books.

**A. Detailed Monthly Report**

Manufacturer shall electronically provide DIR with a detailed monthly report in the format required by DIR showing the dollar volume of any and all sales under this Contract for the previous month period. Reports shall be submitted to the DIR Go DIRect coordinator. Reports are due on the fifteenth (15<sup>th</sup>) day of the close of the previous month period. It is the responsibility of Manufacturer to collect and compile all sales under this Contract from participating Resellers and submits one (1) monthly report. The monthly report shall include the participating individual Reseller's sales for the period, the Reseller's company name, each Customer name, order date, ship date, description, part numbers, manufacturer, quantity, unit price, extended price, Customer purchase order number, contact name, Customer's complete billing address, and other information as required by DIR. Each line item sale must contain all information listed above or the report will be rejected and returned to the Manufacturer for correction.

**B. Historically Underutilized Business Subcontract Reports**

Manufacturer shall electronically provide DIR with Historically Underutilized Business Subcontract Reports as required by Chapter 2161, Texas Government Code, on a quarterly basis. Manufacturer shall also provide each Customer with Customer's relevant Historically Underutilized Business Subcontract Report information.

**C. DIR Administrative Fee**

An administrative fee shall be paid by Manufacturer to DIR to defray the DIR costs of negotiating, executing, and administering this Contract. All prices quoted to Customers shall include the administrative fee. DIR reserves the right to change this fee upwards or downwards during the term of this Contract, upon written notice to Manufacturer. Any change in the administrative fee shall be incorporated in the price to the Customer.

Manufacturer will pay DIR, on the fifteenth (15<sup>th</sup>) day of the close of the previous month period, a two percent (2%) administrative fee based on the dollar value of all sales to Customers pursuant to this Contract. Payment will be calculated for all sales, net of returns and credits. For example, the administrative fee for sales totaling \$100,000 shall be \$2,000.

**13. Enforcement of Contract and Dispute Resolution**

Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) Applicable to State agency purchases only, for disputes not resolved in the normal course of business, the disputer resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall

be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

**14. Notices**

All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given on i) the date of delivery if delivered by email, facsimile transmission, mailed by registered or certified mail, or hand delivered, or (ii) three business days after being mailed via United States Postal Service. The parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party.

If sent to the State:

Patrick W. Hogan  
Department of Information Resources  
300 W. 15<sup>th</sup> St., Suite 1300  
Austin, Texas 78701  
Phone: (512) 475-4700  
Fax: (512) 475-4759  
Email: [patrick.hogan@dir.state.tx.us](mailto:patrick.hogan@dir.state.tx.us)

If sent to the Manufacturer:

Anthony Tucker  
3COM- Contract Manager  
3800 Golf Road  
Rolling Meadow, IL 60008  
Phone: (847) 262-1062  
Fax: (847) 262-0118  
Email: [anthony\\_tucker@3com.com](mailto:anthony_tucker@3com.com)

**15. Captions**

The captions contained in this Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**16. Choice of Law**

The law of the State of Texas shall govern the construction and interpretation of this Contract. Nothing herein shall be construed to waive the state's sovereign immunity.

**IN WITNESS WHEREOF**, the parties therefore hereby execute their mutual agreement to the terms of this Contract. This agreement shall be executed and shall be a binding Contract between the parties.

**3COM**

**The State of Texas, acting by and through the  
Department of Information Resources**

Authorized By: Lily Mei

Authorized By: Patrick W. Hogan

Name: Lily Mei

Name: Patrick W. Hogan

Title: Worldwide Contracts Manager

Title: Director of Business Operations

Date: 11/8/02

Date: 11/4/02

Legal: 11/1/02

**APPENDIX A**  
**STANDARD CLAUSES**  
**STATE OF TEXAS, DIR CONTRACTS**

**TABLE OF CONTENTS**

**GENERAL**

1. Indemnification Clause
2. Non-Assignment Clause
3. No Quantity Guarantees
4. Confidentiality Clause
5. Manufacturer Certifications
6. Equal Opportunity Compliance
7. Technology Access Clause
8. Commodity Software
9. Records
10. Ability to Conduct Business in Texas
11. Quotation, Warranty, and Return Policies
12. Invalid Term or Condition
13. Enforcement of Contract and Dispute Resolution
14. Entireties
15. Modification of Contract Terms and/or Amendments
16. DIR Logo
17. Manufacturer Logo
18. Leasing Provision
19. Site Preparation
20. Training and Trade Show Participation
21. Use of Subcontractors
22. Force Majeure
23. Termination for Non-Appropriation
24. Termination for Convenience
25. Termination for Cause
26. Customer Rights Under Termination
27. Manufacturer or Reseller Rights Under Termination
28. Survival
29. Handling of Written Complaints
30. Orientation Meeting
31. Limitation of Liability

## Appendix A

### STANDARD CLAUSES FOR TEXAS DIR CONTRACTS

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract. Manufacturer shall be fully liable for Resellers performance and compliance with the clauses herein.

1. **INDEMNIFICATION CLAUSE.** Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting solely and directly from any acts or omissions of the Manufacturer or its agents, employees, subcontractors, Resellers, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract provided that 3Com is given immediate notice in writing of any such suit, proceeding or threat there of, (ii) permits 3Com sole control, through counsel of 3Com's choice to defend and/or settle such suit and (iii) gives 3Com all the needed information assistance and authority at 3Com's expense to enable 3Com to defend or settle such suit so long as 3Com coordinates the defense and settlements with the Office of the Attorney General of Texas.

The Manufacturer shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Manufacturer. Manufacturer agrees to defend against any and all such claims at Manufacturer's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Manufacturer. Manufacturer agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

In the event the use or sale of any Product purchased from 3Com is enjoined, or in the event 3Com wishes to minimize its potential liability hereunder, 3Com may, at its sole option and expense: (i) procure for the Customer the right to use or sell such Product; (ii) substitute a functionally equivalent, non-infringing unit of the Product; (iii) modify such Product so that it no longer infringes but is substantially equivalent in functionality; or (iv) if none of the foregoing are commercially feasible, take back such Product and refund the purchase price paid by Customer for such Product depreciated over a five (5) year period using the straight line method. 3Com shall in no event be obligated to accept new orders for Products, which are subject to a claim of infringement covered under this Section.

2. **NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. Manufacturer may not assign this Contract without

the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

3. **NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Manufacturer. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

4. **CONFIDENTIALITY CLAUSE.** Manufacturer acknowledges that DIR is a government agency subject to the Texas Public Information Act. Manufacturer also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Manufacturer with information related to Customers. Manufacturer shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Manufacturer shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

#### **5. MANUFACTURER CERTIFICATIONS.**

Manufacturer certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Manufacturer's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Manufacturer, which if determined adversely to the Manufacturer will have a material adverse effect on the ability of the Manufacturer to fulfill its obligations under this Contract.

#### **6. EQUAL OPPORTUNITY COMPLIANCE.**

Manufacturer agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the

## Appendix A

laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Manufacturer agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Manufacturer under this Contract. If Manufacturer is found to be not in compliance with these requirements during the term of this Contract, Manufacturer agrees to take appropriate steps to correct these deficiencies. Upon request, Manufacturer will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

### **7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)**

Manufacturer expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Manufacturer represents and warrants to DIR and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

**8. COMMODITY SOFTWARE.** Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Manufacturer shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Manufacturer represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order

confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

**9. RECORDS.** The Manufacturer shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all compliance checks or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, name of participating Reseller for the procurement, unit price, extended price, participating Reseller invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Manufacturer shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or copying such books and records. Copies and printouts requested by DIR shall be provided by Manufacturer without charge. DIR shall provide Manufacturer ten (10) business days' notice prior to inspecting, auditing, and/or copying Manufacturer's records. Manufacturer's records, whether paper or electronic, shall be made available during regular office hours. Manufacturer personnel familiar with the Manufacturer's books and records shall be available to DIR staff and designees as needed. Manufacturer shall provide adequate office space to DIR staff during the performance of a compliance check.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to Manufacturer through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Manufacturer can demonstrate to DIR's satisfaction that Manufacturer's calculation of DIR's administrative fee is correct.

**10. ABILITY TO CONDUCT BUSINESS IN TEXAS.**

The Manufacturer is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Manufacturer is a "Qualified Information Systems Manufacturer" as defined in §2157.001, Texas Government Code. All computer networking products and services offered to Customers under this Contract are listed in Manufacturer's catalogue on file with the Texas Building and Procurement Commission.

**11. QUOTATIONS, WARRANTY, AND RETURN POLICIES.**

Manufacturer will adhere to their then-currently published policies concerning quotations, warranties, and return policies. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by Manufacturer for other similarly situated Customers for like products or services.

**12. INVALID TERM OR CONDITION.** If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

**13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION.**

Manufacturer and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

**14. ENTIRETIES.** The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

**15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS.**

The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Manufacturer. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Manufacturer may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Manufacturer shall furnish a copy of such better offerings to DIR upon request.

**16. DIR LOGO.** Manufacturer and its Resellers may use the DIR logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Manufacturer or Reseller logo; (iii) the DIR logo is only used to communicate the availability of computer networking products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

**17. MANUFACTURER LOGO.** DIR may use the Manufacturer's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Manufacturer's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Manufacturer's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Manufacturer.

**18. LEASING PROVISION.** The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

**19. SITE PREPARATION.** Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Manufacturer and/or Reseller(s) prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

**20. TRAINING AND TRADE SHOW PARTICIPATION.** Manufacturer may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Manufacturer.

Manufacturer understands and agrees that it must participate by providing a manned booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Manufacturer's expense. Participating Resellers may also be required to provide a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Reseller's expense. Manufacturer and all participating Resellers must display the DIR logo at all trade shows that potential Customers will attend. Manufacturer must display the DIR logo at all trade shows. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Manufacturer's booth.

**21. USE OF SUBCONTRACTORS.** Manufacturer may subcontract installation, training, warranty, or maintenance services. However, Manufacturer shall remain solely responsible for the performance of its obligations under this Contract. If Manufacturer uses any subcontractors, Manufacturer shall satisfy DIR that it has complied and

## Appendix A

maintains compliance with the DIR HUB Subcontracting Plan.

**22. FORCE MAJEURE.** DIR, Customer, or Manufacturer may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**23. TERMINATION FOR NON-APPROPRIATION.** Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Manufacturer will be provided ten (10) days written notice of intent to terminate.

**24. TERMINATION FOR CONVENIENCE.** Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is determined by the Customer that Manufacturer will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**25. TERMINATION FOR CAUSE.** Either DIR or Manufacturer may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

**26. CUSTOMER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

**27. MANUFACTURER AND/OR RESELLER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services

ordered prior to the effective termination date and ultimately accepted.

**28. SURVIVAL.** All warranty and/or service agreements that were entered into between Manufacturer and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

**29. HANDLING OF WRITTEN COMPLAINTS.** In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Matt Kelly  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701  
(512) 936-6550, voice  
(512) 475-4759, fax  
Email: [matt.kelly@dir.state.tx.us](mailto:matt.kelly@dir.state.tx.us)

**30. ORIENTATION MEETING.** Upon 60 days from execution of the Contract, DIR may require the Manufacturer and all participating Resellers to attend an orientation meeting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Manufacturer. DIR shall bear no cost in the time and travel of the Manufacturer or participating Resellers for attendance at the meeting.

**31. LIMITATION OF LIABILITY**

To the full extent allowed by law the parties exclude any liability, whether based in contract or tort (including negligence), for incidental, consequential, indirect, special or punitive damages of any kind, or for loss of revenue or profits, loss of business, loss of information or data, other financial loss arising out of or in connection with the sale, installation, use, performance, failure or interruption of the products purchased or licensed under this agreement. The exclusion stated in this paragraph also apply to 3Com's suppliers.

Notwithstanding any other provision of this agreement, the maximum liability of either party hereunder shall not exceed the purchase price of the products purchased during the term of this agreement. In the case of Customer's liability to 3Com, the foregoing amount shall be in addition to the payments due by Customer to 3Com for products purchased hereunder.

The disclaimer of liability will not be affected if any remedy provided herein shall fail of its essential purpose. Customer has accepted the disclaimer of liability as part of a bargain to lower the price of the goods and understands that the price of the goods would be higher if 3Com were required to bear additional liability.

## APPENDIX C

**Contract Number DIR-VPC-03-005**

### **3Com Networking Equipment**

#### **Pricing Index**

3Com's Contract pricing to DIR Customers is based on discounts off 3Com List Price. The discount percentages vary by 3Com Product Category. 3Com's LAN Telephony products and CommWorks Remote Access products are being offered as sub-categories with a separate discount schedule. The price list for products and services offered to DIR Customers will include the discount categories associated with each line item. The discount for each category is provided below.

Details are provided below.

<u>Discount Category</u>	<u>TX DIR Discount from List Price</u>
B	41%
D	10%
E	0%
F	30%
G	40%
J	40%
<u>LAN Telephony Category</u>	
F	0%
G	13%
J	4%
<u>CommWorks Category</u>	
J	29%
<u>3Com Services</u>	
Express	15%
Guardian	15%
NBX Installation	15%
On-site Engineering	0%

## APPENDIX D

### Service Agreement Terms and Conditions

This Service Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_, 2002, ("Effective Date") by and between 3Com Corporation ("3Com") and \_\_\_\_ ("Customer"). Subject to the terms and conditions of this Agreement, 3Com shall provide the Services to Customer for those Products and at those locations set forth in the Customer Information Document attached hereto as Appendix A. Any Service provided hereunder is limited to 3Com Business Network Connectivity products only and is not applicable to CommWorks designated products.

#### 1. TERM AND TERMINATION

- 1.1 The term of this Agreement shall be one (1) year from the Effective Date, or for three (3) years if the multi-year option is identified on the Customer Information Document, and may be extended for additional one (1) year terms by mutual agreement. Either party may terminate this Agreement if the other party: (a) fails to perform any material term or condition of this Agreement, and (b) does not remedy the failure within thirty (30) days after receipt of written notice of such failure. In addition, Customer may terminate this agreement if funds sufficient to pay obligation hereunder are not appropriated by the legislative body on behalf of local governments, or by, the Texas legislature on behalf of the state agencies. In the event of non-appropriation 3Com will be provided ten(10) days written notice of intent to terminate.
- 1.2 The termination or expiration of this Agreement shall in no way relieve either party from its obligations to pay the other party any sums accrued hereunder prior to such termination or expiration or affect any other provisions hereunder.

#### 2.0 ELIGIBILITY FOR SUPPORT

- 2.1 This Agreement only covers the 3Com hardware and software ("Products") identified at the time of purchase, any additional Products amended to this Agreement, and any replacement Product, part, or software provided hereunder.
- 2.2 3Com requires that each unit of the same Product located at Customer's site be covered by the same level of Service and must include the chassis and all associated cards.
- 2.3 The Product must contain the most current, or immediately preceding version of 3Com software and/or firmware and be installed and maintained in accordance with the specifications set forth in the manual furnished with the Product.

#### 3.0 RIGHTS AND OBLIGATIONS

- 3.1 Customer shall provide access to all documentation, diagnostics programs, operating systems, utilities, application programs as deemed necessary by 3Com.
- 3.2 3Com may, at its option, designate a sub-contractor to provide Services to Customer on behalf of 3Com.

#### 4.0 SERVICE EXCLUSIONS

- 4.1 Any services outside the scope of this Agreement, including, but not limited to customization or installation of Products. Such additional services may be furnished on a time and materials basis at 3Com's then-current rates, subject to availability of 3Com's service personnel.
- 4.2 Any misuse or negligent use of a Product or part, including replacement of parts or repair of damage, any use other than its intended use, or use outside the environmental range specified by 3Com.
- 4.3 Any services to the Product resulting from unusual external causes such as, but not limited to, power failure, power surges, air conditioning failure, humidity, improper input/output signals to 3Com's connections or Customer's other software not previously approved by 3Com, accident, fire, explosion or Act of God.
- 4.4 All service options may not be available in all locations and may be restricted in some countries due to export or other regulations. Where export restrictions occur, software will not be supplied. 3Com may suspend Services under this Agreement if Customer delivers technical data or Product in violation of the applicable export regulations.

#### 5.0 PAYMENT TERMS

- 5.1 Payment is due in accordance with Chapter 2251, Texas Government Code and will be in US dollars, free of any withholdings or restrictions.
- 5.2 Customer is responsible for all sales, use, value-added, or other taxes (except taxes on 3Com's net income), and all customs, duties, and tariffs now or hereafter claimed or imposed by any governmental authority upon the sale of the Service to Customer under this Agreement. Customer agrees to pay any penalties, interest and collection or withholding costs associated therewith. All such amounts are in addition to other amounts payable hereunder. 3Com acknowledges that Customer is an entity exempt from the assessment and collecting of Texas sales tax, and excise taxes and federal excise taxes and agrees not to charge such taxes in its transactions with customers.
- 5.3 Payment of invoices shall be made in accordance with Chapter 2251, Texas Government Code.
- 5.4 If this Agreement has been purchased from a 3Com reseller, the reseller will be invoiced for the Service fee as defined above and will be liable for the obligations herein. However, should such reseller fail to pay 3Com as required herein, 3Com reserves the right to terminate Services and enforce any rights it may have hereunder, so long as such action does not affect Customer's rights hereunder.

#### 6.0 CONFIDENTIAL INFORMATION

Certain information, which is confidential in nature, may be exchanged in connection with the provision of Services under this Agreement. Confidential information may not be divulged to any third party without the prior written consent of the disclosing party for a period of three (3) years. This obligation does not apply to information which: (i) is now, or becomes, generally known or available; (ii) is lawfully known to the recipient without an obligation of confidentiality; (iii) is lawfully furnished to the recipient by a third party without restriction on disclosure; (iv) is furnished to others by the disclosing party without restriction; (v) is independently developed by the recipient without use of the disclosing party's confidential information; or (vi) is required to be disclosed by a governmental agency or law, provided the recipient gives prompt notice to the other party prior to any disclosure. 3Com acknowledges that Customer's ability to comply with Article 6.0 may be constrained by circumstances with

the Texas Public Information Act. Therefore, Customer shall be excused from compliance with this article to the extent that conflicts with the Act.

**7.0 LIMITED WARRANTY**

- 7.1 3Com warrants that the repaired or replacement Product or part will be free from defects in material and workmanship for the later of a period of ninety (90) days from the date of shipment or the remainder of the original warranty period. 3Com's sole obligation under this limited warranty shall be, at 3Com's option, to repair or replace any defective Product or part.
- 7.2 3Com's technical engineers will provide quality technical support in accordance with generally recognized business practices and standards.
- 7.3 TO THE FULL EXTENT ALLOWED BY LAW, THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, TERMS, OR CONDITIONS, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES, TERMS, OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND SATISFACTORY QUALITY. 3COM'S WARRANTIES CONTAINED HEREIN RUN ONLY TO CUSTOMER, AND ARE NOT EXTENDED TO ANY THIRD PARTIES. 3COM NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS AGREEMENT. 3COM SHALL NOT BE LIABLE UNDER THIS WARRANTY IF ITS TESTING AND EXAMINATION DISCLOSE THAT THE ALLEGED DEFECT IN THE EQUIPMENT OR SOFTWARE DOES NOT EXIST OR WAS CAUSED BY CUSTOMERS OR ANY THIRD PERSON'S MISUSE, NEGLIGENCE, IMPROPER INSTALLATION OR TESTING, UNAUTHORIZED ATTEMPTS TO REPAIR OR MODIFY, OR ANY OTHER CAUSE BEYOND THE RANGE OF THE INTENDED USE, OR BY ACCIDENT, FIRE, LIGHTNING OR OTHER HAZARD.

**8.0 LIMITATION OF LIABILITY**

- 8.1 3Com shall not be liable for any damages arising from performance or non-performance of the Product during a testing period or for any damages caused by the failure of Customer to perform its responsibilities.
- 8.2 3Com shall not be responsible for any software, firmware, information or memory data of Customer contained in, stored on, or integrated with any Product returned to 3Com under this Agreement.
- 8.3 TO THE FULL EXTENT ALLOWED BY LAW THE PARTIES EXCLUDE ANY LIABILITY, WHETHER BASED IN CONTRACT OR TORT (INCLUDING NEGLIGENCE), FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, LOSS OF INFORMATION OR DATA, OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE DISCLAIMER OF LIABILITY FOR DAMAGES WILL NOT BE AFFECTED IF ANY REMEDY PROVIDED HEREIN SHALL FAIL OF ITS ESSENTIAL PURPOSE.

**9.0 GENERAL**

- 9.1 Each party is an independent contractor, and not an agent or employee of the other party.
- 9.2 This Agreement is intended as the complete statement of the terms of the agreement between the parties relating to Services.
- 9.3 If either party is prevented from carrying out any of its obligations under this Agreement due to any circumstance beyond its reasonable control including, without limitation, act of government or God, interruption of power supplies, interference by a third party, industrial disputes, earthquake or other natural disaster, the party affected shall be excused from performance of such obligation for the duration and to the extent of such preventing circumstance.
- 9.4 A waiver of any default hereunder or of any of the terms and conditions of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition. In the event any provision of this Agreement is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of any of the remaining provisions shall not be affected thereby.
- 9.5 Neither this Agreement nor any of the rights or obligations can be assigned or transferred without the prior written consent of the both parties. However, 3Com has the right (i) to assign all of its rights and obligations in the case of a merger, consolidation or sale of substantially all its assets or substantially all the assets of a particular product line or business line which is included within the terms of this Agreement and (ii) to assign the right to receive payment, provided, however, that Customer has the right to assign all its rights and obligations in the case of a legislatively mandated change of governmental entity responsible for the assets acquired pursuant to this Agreement.
- 9.6 The validity, performance construction, and interpretation of this Agreement shall be governed by the laws of the State of Texas, excluding conflicts of laws principles.
- 9.7 Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.
- 9.8 The provisions of this section shall survive for a period of five (5) years from the termination or expiration of this Agreement. All warranties and confidentiality provisions shall remain in effect for their stated duration.
- 9.9 If Customer is a Texas state agency, the provision of Chapter 2260, Texas Government code shall govern the resolution of all disputes.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the Effective Date stated at the beginning of this Agreement.

**3Com Corporation**

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Customer:** \_\_\_\_\_

Signature: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## Service Descriptions

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### **Guardian<sup>sm</sup> Service**

#### **Description**

Guardian<sup>sm</sup> Service entitles Customer to technical support for an unlimited number of incidents, on-site support, advance hardware replacement and Software Updates for those Products and to those sites listed in Appendix A, Customer Information Document(s).

- **Technical Support**

Technical Support will be available via access to 3Com technical support web site and via telephone. If telephone support is requested, and a technical engineer is not immediately available, 3Com will respond with a callback within one (1) hour of Customer's initial request.

Technical Support will include assistance in the use of the Products, as well as problem identification and resolution, including workarounds, when possible. Assistance may also include logging into Customer's system via modem for diagnosis of problems, if such access is made available to 3Com.

For NBX Products, 3Com shall provide limited assistance in resolving problems that are related to Customer's telecommunication providers. Such assistance shall consist of limited troubleshooting of 3Com Products, including testing of connections as necessary for problem identification, but does not include problem resolution on non-3Com products.

- **Advance Hardware Replacement**

Advance Hardware Replacement ensures that a replacement for a defective hardware Product or part will be shipped to the Customer before requiring the Customer to return the defective Product or part to 3Com. Product or part will be shipped to arrive at Customer's site the next business day after dispatch. However, any requests for replacement Product received after 3:00 PM local time may ship the following business day for second day delivery. 3Com will provide a Return Material Authorization number (RMA) to allow the return of the defective Product or part. All delivery costs are borne by 3Com.

A replacement Product or part may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to 3Com within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Customer. In the event the defective Product or part is not returned within fifteen (15) days, or is returned in an unacceptable condition, Customer agrees to pay the list price per Product or part as stated in the then-current 3Com price list. Failure to pay the price or return the defective Product or part promptly will result in the suspension of Services.

- **On-Site Engineer**

When a problem cannot be resolved by utilizing technical support, 3Com will dispatch an engineer to arrive on-site pursuant to the Service level purchased by Customer.

3Com shall comply with all Customers or Government imposed security requirements while on Customer premises. However, 3Com shall not be responsible for delays in performing Services due to Customer's failure to provide 3Com with access to Customer's facilities or due to such security requirements

- **Software Updates**

Customer is entitled to access Software Updates (including related documentation) that are made available for the Products during the term of this Agreement; however, 3Com does not guarantee the frequency or quantity of such Software Updates. Software Updates are defined as formal software releases that may include new features and functionality, and that are not considered a new product or a chargeable upgrade by 3Com, for which there will be a separate cost.

Any software provided hereunder will be governed by the license agreement accompanying the original Product purchased by Customer. Customer has the right to duplicate both the software and documentation for its own internal use, provided that all copyright, trademark, and other proprietary rights notices are also reproduced in the same form and manner as on the original media.

3Com may issue a Software Update that also requires a hardware upgrade in order to utilize new functionality of the Software. Any such hardware upgrade is not covered. Customer may purchase the hardware upgrade at the price set forth in the then-current 3Com Price List, less applicable discount (if any).

Software Updates for Network Management applications, Advanced Features and those requiring specific Software license keys are not included as part of this Service.

## **Express<sup>sm</sup> Service**

### **Description**

Express<sup>sm</sup> Service entitles Customer to technical support for an unlimited number of incidents, advance hardware replacement and Software Updates for those Products and to those sites listed in Appendix A, Customer Information Document(s).

- **Technical Support**

Technical Support will be available via access to 3Com technical support web site and via telephone. If telephone support is requested, and a technical engineer is not immediately available, 3Com will respond with a callback within one (1) hour of Customer's initial request.

Technical Support will include assistance in the use of the Products, as well as problem identification and resolution, including workarounds, when possible. Assistance may also include logging into Customer's system via modem for diagnosis of problems, if such access is made available to 3Com.

For NBX Products, 3Com shall provide limited assistance in resolving problems that are related to Customer's telecommunication providers. Such assistance shall consist of limited troubleshooting of 3Com Products, including testing of connections as necessary for problem identification, but does not include problem resolution on non-3Com products.

- **Advance Hardware Replacement**

Advance Hardware Replacement ensures that a replacement for a defective hardware Product or part will be shipped to the Customer before requiring the Customer to return the defective Product or part to 3Com. Product or part will be shipped to arrive at Customer's site the next business day after dispatch. However, any requests for replacement Product received after 3:00 PM local time may ship the following business day for second day delivery. 3Com will provide a Return Material Authorization number (RMA) to allow the return of the defective Product or part. All delivery costs are borne by 3Com.

A replacement Product or part may be new or reconditioned of like kind, functionality, and quality. The defective Product or part must be returned to 3Com within fifteen (15) days of receipt of the replacement product; all shipping costs are borne by Customer. In the event the defective Product or part is not returned within fifteen (15) days, or is returned in an unacceptable condition, Customer agrees to pay the list price per Product or part as stated in the then-current 3Com price list. Failure to pay the price or return the defective Product or part promptly will result in the suspension of Services.

- **Software Updates**

Customer is entitled to access Software Updates (including related documentation) that are made available for the Products during the term of this Agreement; however, 3Com does not guarantee the frequency or quantity of such Software Updates. Software Updates are defined as formal software releases that may include new features and functionality, and that are not considered a new product or a chargeable upgrade by 3Com, for which there will be a separate cost.

Any software provided hereunder will be governed by the license agreement accompanying the original Product purchased by Customer. Customer has the right to duplicate both the software and documentation for its own internal use, provided that all copyright, trademark, and other proprietary rights notices are also reproduced in the same form and manner as on the original media.

3Com may issue a Software Update that also requires a hardware upgrade in order to utilize new functionality of the Software. Any such hardware upgrade is not covered. Customer may purchase the hardware upgrade at the price set forth in the then-current 3Com Price List, less applicable discount (if any).

Software Updates for Network Management applications, Advanced Features and those requiring specific Software license keys are not included as part of this Service.

## **Software Updates Service**

### **Description**

Software Updates Service entitles Customer to Software Updates for those Products and to those sites listed in Appendix A, Customer Information Document(s). Software Updates are defined as formal software releases that may include new features and functionality, and that are not considered a new product or a chargeable upgrade by 3Com, for which there will be a separate cost.

- **Software Updates**

Customer is entitled to access Software Updates (including related documentation) that are made available for the Products during the term of this Agreement; however, 3Com does not guarantee the frequency or quantity of such Software Updates.

Any software provided hereunder will be governed by the license agreement accompanying the original Product purchased by Customer. Customer has the right to duplicate both the software and documentation for its own internal use, provided that all copyright, trademark, and other proprietary rights notices are also reproduced in the same form and manner as on the original media.

3Com may issue a Software Update that also requires a hardware upgrade in order to utilize new functionality of the Software. Any such hardware upgrade is not covered. Customer may purchase the hardware upgrade at the price set forth in the then-current 3Com Price List, less applicable discount (if any).

Software Updates for Network Management applications, Advanced Features and those requiring specific Software license keys are not included as part of this Service.